

JOINT STATEMENT OF THE MISSOURI STATE BOARD OF REGISTRATION FOR
THE HEALING ARTS AND
THE MISSOURI BOARD OF PHARMACY
ON
INTERNET PRESCRIBING AND DISPENSING

Preamble

The Missouri Board of Healing Arts and Pharmacy are two agencies within the Division of Professional Registration, which is a regulatory agency within the Missouri Department of Economic Development. Part of the mission of the two boards is to enforce minimum standards of practice and licensure for the practice of medicine and pharmacy and to protect consumers against incompetent or illegal practices.

During the past couple of years, the availability of pharmaceutical products on the internet and the use of various sites by consumers to procure prescription drugs has led to a new set of issues that face regulators in assuring safe and effective outlets are available for such transactions.

Portal sites advertising the availability of prescription drugs directly to consumers have increased tremendously. Many of these sites are lawful and provide genuine products and services utilizing important and traditional practices.

The boards of healing arts and pharmacy recognize that the internet offers potential benefits in the provision of medical care. The appropriate application of this technology can enhance medical care by facilitating communication with physicians and other health care providers, refilling prescriptions, obtaining laboratory results, scheduling appointments, monitoring chronic conditions, providing health care information and clarifying medical advice. The boards of healing arts and pharmacy remind practitioners that all applicable state and federal statutes and regulations must be adhered to in the practice of medicine and pharmacy, including practices that utilize e-mail and other electronic modalities.

Pertinent State Laws

The following is not intended to be an exhaustive list of all state statutes and regulations that pertain to the practice of medicine and pharmacy in Missouri, but is provided only as a reminder of some of the most basic requirements to which practitioners of medicine and pharmacy must adhere. These statutes and regulations serve only as a starting point in determining whether or not a practice complies with the law.

Medical Practice Act

334.010. 1. It shall be unlawful for any person not now a registered physician within the meaning of the law to practice medicine or surgery in any of its departments, to engage in the practice of medicine across state lines or to profess to cure and attempt to treat the sick and

others afflicted with bodily or mental infirmities, or engage in the practice of midwifery in this state, except as herein provided.

2. For the purposes of this chapter, the "practice of medicine across state lines" shall mean:

- (1) The rendering of a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or physician's agent; or
- (2) The rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or physician's agent.

334.100.2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

....

(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following:

....

(h) Signing a blank prescription form; or dispensing, prescribing, administering or otherwise distributing any drug, controlled substance or other treatment without sufficient examination, or for other than medically accepted therapeutic or experimental or investigative purposes duly authorized by a state or federal agency, or not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, except as authorized in section 334.104;

Pharmacy Practice Act

338.010. 1. The "practice of pharmacy" shall mean the interpretation and evaluation of prescription orders; the compounding, dispensing and labeling of drugs and devices pursuant to prescription orders; the participation in drug selection according to state law and participation in drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records thereof; consultation with patients and other health care practitioners about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy. No person shall engage in the practice of pharmacy unless he is licensed under the provisions of this chapter. This chapter shall not be construed to prohibit the use of auxiliary personnel under the direct supervision of a pharmacist from assisting the pharmacist in any of his duties. This assistance in no way is intended to relieve the pharmacist from his

responsibilities for compliance with this chapter and he will be responsible for the actions of the auxiliary personnel acting in his assistance. This chapter shall also not be construed to prohibit or interfere with any legally registered practitioner of medicine, dentistry, podiatry, or veterinary medicine, or the practice of optometry in accordance with and as provided in sections 195.070 and 336.220, RSMo, in the compounding or dispensing of his own prescriptions.

338.210. 1. Pharmacy refers to any location where the practice of pharmacy occurs or such activities are offered or provided by a pharmacist or another acting under the supervision and authority of a pharmacist, including every premises or other place:

- (1) Where the practice of pharmacy is offered or conducted;
- (2) Where drugs, chemicals, medicines, prescriptions, or poisons are compounded, prepared, dispensed or sold or offered for sale at retail;
- (3) Where the words "pharmacist", "apothecary", "drugstore", "drugs", and any other symbols, words or phrases of similar meaning or understanding are used in any form to advertise retail products or services;
- (4) Where patient records or other information is maintained for the purpose of engaging or offering to engage in the practice of pharmacy or to comply with any relevant laws regulating the acquisition, possession, handling, transfer, sale or destruction of drugs, chemicals, medicines, prescriptions or poisons.

2. All activity or conduct involving the practice of pharmacy as it relates to an identifiable prescription or drug order shall occur at the pharmacy location where such identifiable prescription or drug order is first presented by the patient or the patient's authorized agent for preparation or dispensing, unless otherwise expressly authorized by the board.

3. The requirements set forth in subsection 2 of this section shall not be construed to bar the complete transfer of an identifiable prescription or drug order pursuant to a verbal request by or the written consent of the patient or the patient's authorized agent.

4. The board is hereby authorized to enact rules waiving the requirements of subsection 2 of this section and establishing such terms and conditions as it deems necessary, whereby any activities related to the preparation, dispensing or recording of an identifiable prescription or drug order may be shared between separately licensed facilities.

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.

338.220.1. It shall be unlawful for any person, copartnership, association, corporation or any other business entity to open, establish, operate or maintain any pharmacy, as defined by statute without first obtaining a permit or license to do so from the Missouri board of pharmacy. . . .

4 CSR 220-2.025 Nonresident Pharmacies

PURPOSE: This rule establishes licensure guidelines for nonresident pharmacies.

(1) Nonresident pharmacies shall not ship, mail or deliver prescription drugs into Missouri without first obtaining a pharmacy license from the Missouri Board of Pharmacy. An exemption to licensure is allowed when a nonresident pharmacy provides a prescription drug in an emergency situation or supplies lawful refills to a patient from a prescription that was originally

filled and delivered to a patient within the state in which the nonresident pharmacy is located or provides medications upon receipt of a prescription or physician order for patients in institutional settings and the nonresident pharmacy is not recognized as a primary provider.

(2) To obtain a license as a pharmacy, a nonresident pharmacy must comply with each of the following:

(A) Maintain a license in good standing from the state in which the nonresident pharmacy is located;

(B) Submit an application as provided by the Missouri Board of Pharmacy for licensure in compliance with 4 CSR 220-2.020(2) and (3);

(C) Pay all appropriate licensing fees;

(D) Submit a copy of the state pharmacy license from the state in which the nonresident pharmacy is located; and

(E) Submit a copy of the state and federal controlled substance registrations from the state in which it is located, if controlled substances are to be shipped into Missouri.

(3) When requested to do so by the Missouri Board of Pharmacy, each nonresident pharmacy shall supply any inspection reports, warning notices, notice of deficiency reports or any other related reports from the state in which it is located concerning the operation of a nonresident pharmacy for review of compliance with state and federal drug laws.

(4) Except in emergencies that constitute an immediate threat to the public health and require expedited action by the board, the Missouri Board of Pharmacy shall file a complaint when known or suspected violations are uncovered with the licensing board of the state in which the nonresident pharmacy is located. If the licensing board in the state in which the nonresident pharmacy is located initiates disciplinary action, the Missouri Board of Pharmacy may request the appropriate documents involved in the action for consideration of discipline against the pharmacy license of the nonresident pharmacy. If no action is taken against the nonresident pharmacy by the licensing board of the state in which it is located, the Missouri Board of Pharmacy may request copies of any investigation reports available from that state.

(5) The Missouri Board of Pharmacy will extend reciprocal cooperation to any state that licenses and regulates nonresident pharmacies for the purpose of investigating complaints against pharmacies located in Missouri or the sharing of information and investigative reports, as long as the other state will extend the same reciprocal cooperation to the Missouri Board of Pharmacy.

Summary

It is unlawful for any person not licensed as a physician in Missouri to engage in the practice of medicine across state lines, except as provided by law.

The "practice of medicine across state lines" includes the rendering of written or otherwise documented medical opinions concerning the diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to the physician or physician's agent. The "practice of medicine across state lines" also includes the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to such physician or physician's agent.

Signing a blank prescription form; or dispensing, prescribing, administering or otherwise distributing any drug, controlled substance or other treatment without sufficient examination may be grounds for discipline.

No person shall engage in the practice of pharmacy in Missouri unless that person is licensed according to state law.

It is unlawful to operate a pharmacy in Missouri without a license or permit as required by law. It is unlawful for nonresident pharmacies to ship, mail or deliver prescription drugs into Missouri without first obtaining a pharmacy license from the Missouri Board of Pharmacy, except as provided by law.

The "practice of pharmacy" includes the interpretation and evaluation of prescription orders; the compounding, dispensing and labeling of drugs and devices pursuant to prescription orders; the participation in drug selection according to state law and participation in drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records thereof; consultation with patients and other health care practitioners about the safe and effective use of drugs and devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management and control of a pharmacy.

All applicable state and federal statutes and regulations must be adhered to in the practice of medicine and pharmacy, including practices that utilize e-mail and other electronic modalities.